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10/764,917	01/26/2004	Robert Tomassi	TOMASSI-3	2957
32132 7590 10/26/2007 LAMORTE & ASSOCIATES P.C. P.O. BOX 434 YARDLEY, PA 19067				
			EXAMINER CRAWFORD, GENE O	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**MAILED**

OCT 26 2007

Application Number: 10/764,917  
Filing Date: January 26, 2004  
Appellant(s): TOMASSI, ROBERT

**GROUP 3600**

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**EXAMINER'S ANSWER**

Art Unit: 3609

This Supplemental Examiner's Answer is in response to the Order Returning Undocketed Appeal To Examiner filed on 09/09/2007 and also in response to the appeal brief filed on 10/27/2005 appealing from the Office action mailed 05/24/2005. Correction has been made to indicate that no new ground of rejection is introduced. Section "Related Proceeding(s) Appendix" has been added.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,615,191

Seeley

09-2003

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Seeley.

Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Seeley. The vending machine for vending regulated products and method of only permitting authorized users to use the vending machine disclosed by Seeley includes all the claimed features and in particular includes: (claims 1, 3, 7, 11) a money validation unit for receiving and validating money, an identification card reader for reading an identification card (column 6, lines 32-37)\*, a biometric characteristic scanner J for reading an actual biometric characteristic from a person standing in front of the vending machine (column 7, lines 20-25)\*, a system controller I for enabling the vending machine to vend the regulated products only after a proper fee has been deposited and data read from the identification card is compared to the actual characteristic read by the biometric scanner (column 7, lines 5-36)., (claims 2, 8, 12) the biometric characteristic scanner J being one of a fingerprint scanner, retinal scanner, or a voice analyzer (column 7, lines 20-25); (claims 5, 9, 13) the vending machine vending a product that can only be sold to potential users over a predetermined age as broadly claimed in that the vending machine of Seeley is capable of distributing music, pictures and/or video material all of which have age limitations with regard to certain content; (claim 4) the step of enabling the vending machine only after a potential user has deposited a predetermined fee in the money validation system', and (claims 6, 10, 14) the vending machine vending pre-purchased products that are to dispensed only to a potential user who pre-purchased the product in that stored works/products can be registered for and paid for in advance (column 7, lines 50-54).

**(10) Response to Argument**

Appellant argued that Seeley 6,615,191 allows "anyone" to purchase the product from the vending machine at any time. "The vending machine works for anyone with money. The Seeley Patent only address the use of the software by authorized people after it is purchased from a vending machine and taken home". Appellant argued that the vending machine of Seeley '191 does not permit only authorized users to use the machine. This argument is not persuasive. Seeley '191 does in fact permit only authorized users to use the machine. Seeley '191 allows only authorized users, verified biometrically registered users, to enable the vending machine at a predetermined discounted price. Non-authorized users cannot enable the vending machine with the monetary value at said discounted price. Seeley '191 vending machine permits only authorized users to have access to the vending machine for a set price. Non-authorized users with such set price cannot enable Seeley '191 vending machine. In addition, since Seeley '191 anticipates all structural and method steps of the claimed invention, it is interpreted that Seeley '191 also permits only authorized users to use the machine.

Appellant agreed that Seeley 6,615,191 does contain among other things: biometric smart card for registering a user with the vending machine, and biometric verification means for verifying the previously registered user. However, Appellant argued that Seeley '191 verification step is done at home, prior to its usage by a user, after the software product has been vended from a vending machine. Appellant argued that the sale is not dependent upon the biometric data, but the authorization to later run the

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software is. This argument is not persuasive. Apparently, Appellant has failed to appreciate Seeley '191 teaching that the vending machine and the software player can all be located in a single machine (column 8, lines 46-51). This means that a user to said single vending machine, in order to access the machine at predetermined price, will have to biometrically register and then verified by the system in order to enable the vending machine. Hence, the registering and verification steps are done at a single location. The term "enabling the vending machine" is interpreted to be the complete vending/enabling of the software. Seeley '191 remains anticipatory to the claimed invention.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Khoi H. Tran



Conferees:

Gene Crawford (SPE)

Patrick Mackey (SPE)



**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.



**(12) Evidence Appendix**

None

**(13) Related Decision Appendix**

None